IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 713 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANU CONTRACTOR AND ANOTHER
Versus
THE STATE OF GUJARAT AND ANOTHER

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Appearance :
MR MITESH R AMIN for the petitioners

Mr M.R.Mengdey, learned APP for Respondent No.1
NOTICE SERVED BY DS for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2007

ORAL JUDGMENT

1 By way of this petition under Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code the

petitioners – original accused have prayed for an appropriate order quashing and setting aside the order dated 23.2.2007 passed by the learned Additional Principal Civil Judge, City Sessions Court, in Criminal Revision Application No.74 of 2007.

2 The facts leading to the present petition in nutshell are that respondent No.2 – original complainant filed one complaint on 22nd March 2001 against the petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 before the learned Metropolitan Magistrate, Court No.13, Ahmedabad. The plea of the petitioners was recorded. As the original complainant was not remaining present, the petitioner No.2 gave an application for dismissing the complaint on the ground of non-availability of the complainant. The said application was given on 12.12.2005. The learned Magistrate posted the application dated 12.12.2005 for final hearing and by order dated 18.11.2006 the learned Metropolitan Magistrate passed an order to dismiss the complaint. Respondent No.2 – original complainant filed restoration application before the learned Metropolitan Magistrate, Court No.13 on 20th November 2006 and the said application came to be dismissed by order dated 2nd February 2007 on the ground of absence of the complainant and his advocate. Being aggrieved by and dissatisfied with the same, respondent No.2 preferred revision application before the learned City Sessions Court at Ahmedabad being Criminal Revision Application No.74 of 2007 on 22nd February 2007 and on the very next day i.e. on 23.2.2007 the learned City Civil and Sessions Judge, Court No.2, Ahmedabad vide his order dated 23rd February 2007 allowed the said revision application even without issuing the notice to the petitioners. Being aggrieved and dissatisfied with the same the petitioners – original accused have preferred the present petition.

3 Mr Amin, learned counsel for the petitioners has vehemently submitted that when the order passed by the learned Magistrate which was in favour of the petitioners – original accused came to be set aside by the revisional court, he ought to have heard the petitioners. It is submitted that, therefore, the impugned order dated 23rd February 2007 is in breach of the principles of natural justice and the same is required to be quashed and set aside. It is also further submitted that even before allowing the said revision application no notices were issued upon the respondents of that revision application i.e. the petitioners herein.

4 Shri Vijay M Shukla, learned advocate appearing on behalf of respondent No.2 – original complainant is, not in a position to dispute that the petitioners were not heard by the Revisional Court. Even otherwise, it appears from the order that revision application was submitted on 22nd February 2007 and on the very next day i.e. on 23rd February 2007 even without issuing the notice the learned City Sessions Court, Court No.2, Ahmedabad passed order dated 23.2.2007 setting aside the order passed by the trial court and allowed Criminal Revision Application No.74 of 2007. First of all, the learned Sessions Judge ought not to have allowed the revision application without issuing any notice upon the respondents of that revision application and even whenever any order is set aside, the person in whose favour the order is passed is required to be heard and that is the cardinal principles of natural justice. Under the circumstances, the impugned order passed by the learned City Sessions Judge, Court No.2, Ahmedabad dated 23.2.2007 passed in Criminal Revision Application No.74 of 2007 cannot be sustained and the same is required to be quashed and set aside as the same is in breach of the principles of natural justice and without giving any opportunity of hearing to the petitioners.

5 For the reasons stated above, the petition succeeds. Order passed by the learned City Additional Sessions Judge, Court No.2, Ahmedabad passed in Criminal Revision Application No.74 of 2007 is hereby quashed and set aside and the matter is remanded to the revisional court for deciding the revision application afresh in accordance with law and on merits after giving an opportunity of hearing to all the concerned including the present petitioners. In the facts and circumstances of the case, the learned Principal City Sessions Judge, Ahmedabad is directed to see that Revision Application No.74 of 2007 is not placed before the learned Judge who had passed the impugned order, which is set aside and the Revision Application may be placed before any other learned Judge. Rule is made absolute. Office is directed to send a writ of this order to the revisional court and the Principal City Sessions Judge, Ahmedabad immediately.

(M.R.Shah, J.)

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